

## STATEMENT OF CONSIDERATIONS

PETITION FOR ADVANCE WAIVER OF PATENT RIGHTS BY GE  
NUCLEAR ENERGY ("GE") UNDER CONTRACT NO. QZ001 UNDER  
COOPERATIVE AGREEMENT NO. DE-FC07-05ID14635 BETWEEN  
DOMINION NUCLEAR NORTH ANNA LLC ("DOMINION") AND DOE;  
W(A)-05-025; CH-1291

The Petitioner, GE, has requested a waiver of domestic and certain foreign patent rights for all subject inventions that may be conceived or first actually reduced to practice by GE or its subcontractors, arising from its participation under the above referenced cooperative agreement entitled "North Anna Construction and Operating License Demonstration Project."

The objective of the North Anna Construction and Operating License Demonstration Project is to demonstrate the combined Construction and Operating License ("COL") process under 10 CFR 52 to promote new Nuclear Power Plant ("NPP") construction in the United States. This work is funded under DOE's Nuclear Power 2010 Program, which is a government/industry cost-shared effort to identify sites for new nuclear power plants, develop and bring to market advanced nuclear plant technologies, evaluate the business case for building new nuclear power plants, and demonstrate untested regulatory processes leading to an industry decision in the next few years to seek Nuclear Regulatory Commission (NRC) approval to build and operate new advanced nuclear power plants in the United States.

Petitioner's contract is designed to further develop GE's Economic Simplified Boiling Water Reactor ("ESBWR"), and support site evaluations, licensing efforts, and business assessments that utility companies need to determine whether to build new NPPs.

The total cost of the project with Dominion is approximately \$426 million. The anticipated cost of the contract with Petitioner is approximately \$324 million, with the Petitioner providing about fifty percent (50%) cost sharing. This waiver is contingent upon the Petitioner maintaining, in aggregate, the above cost sharing percentage over the course of its contract. The programs are divided into two phases. Phase 1 will be performed in 2005 and will include detailed planning for the program. Phase 2 will be performed in the years 2006-2011.

As set out in the attached waiver petition, Petitioner has also requested a waiver of patent rights in the subject inventions of its lower-tier subcontractors. In view of the cost sharing and other equities between Petitioner and its subcontractors, it is anticipated that the parties will develop an appropriate allocation of patent rights among the participants to facilitate the expeditious development of the technology forming the subject matter of this contract. Accordingly, DOE will waive, to Petitioner or its subcontractors, as mutually agreed by the parties, title to all subject inventions made by Petitioner's employees and its subcontractors' employees, regardless of tier. However, this waiver shall not impact the rights of those parties subject to Public Law 96-517, as amended, nor shall it grant any rights in inventions made by employees of the National

Laboratories. Except as otherwise approved in writing by DOE Patent Counsel, a party's acceptance of a lower-tier subcontract under this contract shall constitute Petitioner's certification that it has provided the party with a copy of the approved Statement of Considerations and that the party accepts the terms and conditions of this advance waiver. Lower-tier subcontractors who receive a disposition of patent rights under this waiver shall notify DOE Patent Counsel in writing of such acceptance.

As noted in its waiver petition, Petitioner is a pioneer and worldwide leader in designing and supplying Boiling Water Reactors ("BWR"). Petitioner supplied the first commercial BWR to generate electricity in 1960 and has since supplied BWRs in ten different countries. Petitioner continues to design and supply BWRs around the world and has been assigned numerous patents for BWR technology over the past five decades, including several patents related to the development of the ESBWR and its predecessors. Petitioner's financial and technological investment in the present technology has been substantial, spanning several decades and totaling hundreds of millions of dollars.

Considering Petitioner's technical expertise, established market position, and significant investment in this technology including sizable cost sharing in this contract, it is reasonable to conclude that Petitioner will continue to develop and ultimately commercialize the technology and products which may arise from this contract.

Petitioner has agreed that this waiver shall be subject to the march-in and preference for U.S. industry provisions, as well as the U.S. Government license, comparable to those set out in 35 U.S.C. 202-204. Further, Petitioner has agreed to the attached U.S. Competitiveness provision paragraph (t). In brief, Petitioner has agreed that products embodying a waived invention or produced through the use of a waived invention will be manufactured substantially in the United States unless the Petitioner can show to the satisfaction of the DOE that is not commercially feasible to do so.

Additionally, Petitioner has agreed to certain special data provisions as previously negotiated and attached hereto. Specifically, Petitioner has the right to copyright data generated under its contract. The government will have a paid-up nonexclusive license in the copyrighted data subject to certain release restrictions. Similar special data provisions have been approved in previous DOE light water reactor projects. DOE's Office of Nuclear Power Systems have approved the special data provisions as negotiated and provided in the Petitioner's contract. The special data provisions were considered necessary to allow Petitioner to protect commercially valuable data generated under its contract, so that Petitioner may expeditiously commercialize the technology that is the subject of its contract.

Referring to item 10 of the waiver petition, granting this waiver is not anticipated to have any adverse impact on competition. If anything, the technology forming the subject matter of the collaboration can be expected to stimulate competition among the several companies including Westinghouse and Areva which are also developing new NPPs.

Considering the foregoing, it is believed that granting this waiver will provide Petitioner with the necessary incentive to invest its resources in the commercialization

of the results of the contract in a fashion which will make the above technology available to the public in the shortest practicable time. Therefore, upon evaluation of the waiver petition and in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver be granted.



Brian J. Lally  
Patent Attorney  
Office of Intellectual Property Law



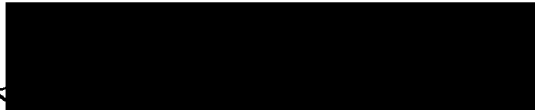
Daniel D. Park  
Assistant Chief Counsel  
Office of Intellectual Property Law

Date: 10/24/05

Date: 10/25/05

Based upon the foregoing Statement of Considerations and representations in the attached waiver petition, it is determined that the interests of the United States and the general public will best be served by a waiver of patent and data rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of the contract, where through such modification or extension, the purpose, scope or cost of the contract has been substantially altered.

CONCURRENCE:



Rebecca F. Smith-Kevern  
Associate Director  
Nuclear Power Technology  
Safety and Security  
Office of Nuclear Power Systems  
NE-30

APPROVAL:



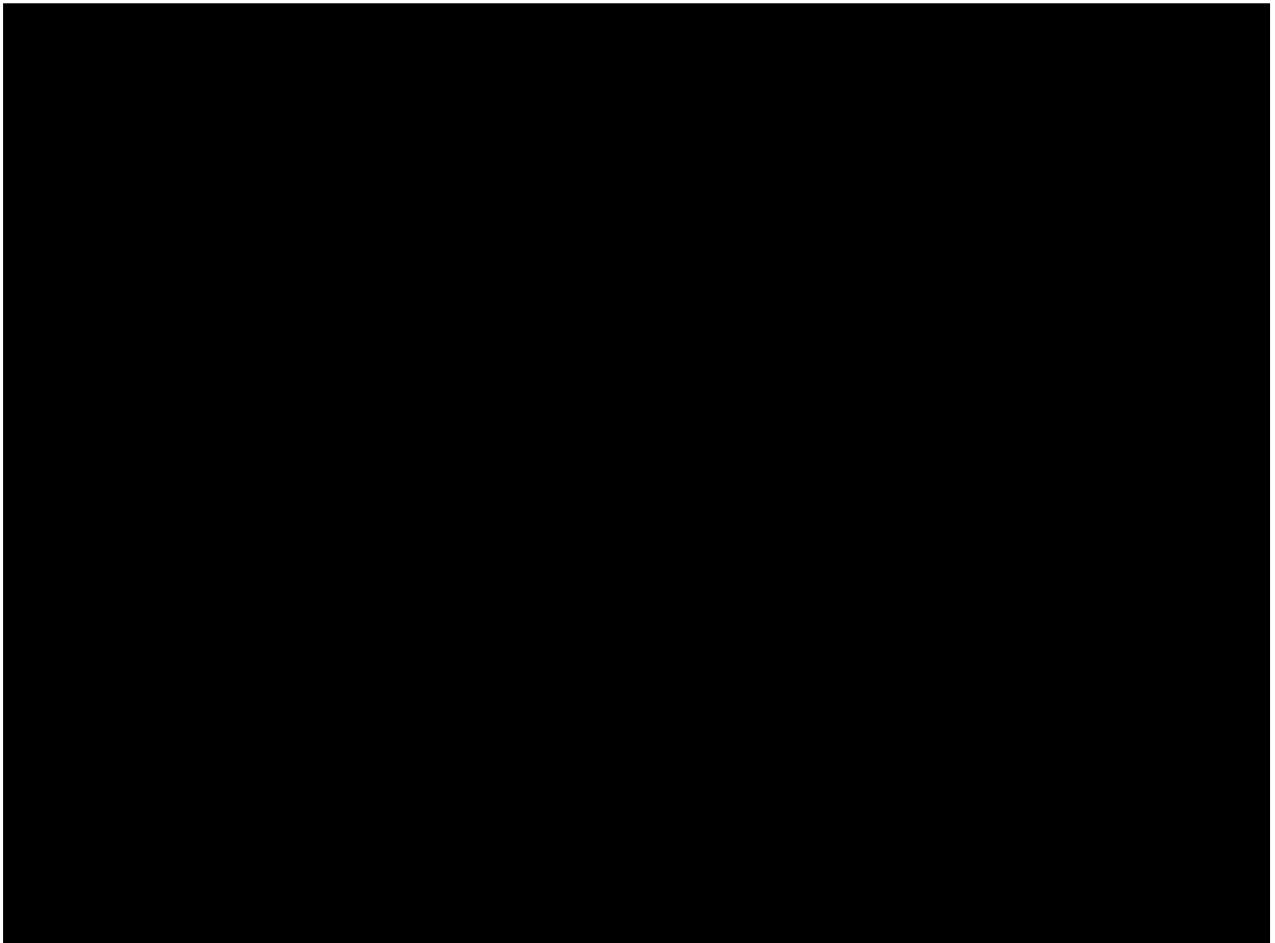
Paul A. Gottlieb  
Assistant General Counsel  
for Technology Transfer and  
Intellectual Property

Date: 31 October 2005

Date: 11-4-05

(t) U. S. Competitiveness

The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.



WAIVER ACTION - ABSTRACT  
W(A)-05-025

REQUESTOR

GE Nuclear Energy

CONTRACT SCOPE

Development of new advanced  
nuclear power plants in the U.S.

RATIONALE FOR DECISION

50% Cost Sharing